

§ 1.279-6

business of making loans or purchasing or discounting accounts receivable, notes, or installment obligations. Additionally, the rules stated in this paragraph regarding the application of the ratio of debt to equity, the determination of the annual interest to be paid or incurred, and the determination of the average annual earnings also apply if the bank or lending or finance company is a member of an affiliated group of corporations. However, the rules are to be applied only for purposes of determining the debt, equity, projected earnings and annual interest of the bank or lending or finance company which then are taken into account in determining the debt to equity ratio and ratio of projected earnings to annual interest to be paid or incurred by the affiliated group as a whole. Thus, these rules are to be applied to reduce the bank's or lending or finance corporation's indebtedness, annual interest to be paid or incurred, and average annual earnings which are taken into account with respect to the group, but are not to reduce the indebtedness of, annual interest to be paid or incurred by, and average annual earnings of, any corporation in the affiliated group which is not a bank or a lending or finance company. In determining whether any corporation which is a member of an affiliated group is primarily engaged in a lending or finance business, only the activities of such corporation, and not those of the whole group, are to be taken into account. See § 1.279-6 for the application of section 279 to certain affiliated groups of corporations.

(2) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example 1. As of the close of the taxable year, X Bank has a total indebtedness of \$100 million, total assets of \$115 million, and \$80 million is owed to X Bank by its customers. Bank X's indebtedness is \$20 million (\$100 million total indebtedness less \$80 million owed to the X Bank by its customers) and its assets are \$35 million (\$115 million total assets less \$80 million owed to the bank by its customers). If its annual interest to be paid or incurred is \$5 million, such amount is reduced by \$4 million. Thus, X Bank's annual interest to be paid or incurred is \$1 million.

Example 2. Assume the same facts as in *Example 1*. X Bank has earnings and profits of \$23 million for the 3-year period used to determine projected earnings. In computing

the average annual earnings, the \$23 million amount will be reduced by \$12 million (three times the \$4 million reduction of interest in *Example 1*, assuming that the reduction was the same for each year). Thus X Bank's earnings and profits for such 3-year period are \$11 million (\$23 million total earnings and profits less \$12 million reduction).

[T.D. 7262, 38 FR 5847, Mar. 7, 1973, as amended by T.D. 9264, 71 FR 30593, May 30, 2006]

§ 1.279-6 Application of section 279 to certain affiliated groups.

(a) *In general.* Under section 279(g), in any case in which the issuing corporation is a member of an affiliated group, the application of section 279 shall be determined by treating all of the members of the affiliated group in the aggregate as the issuing corporation, except that the ratio of debt to equity of, projected earnings of, and the annual interest to be paid or incurred by any corporation (other than the issuing corporation determined without regard to this paragraph) shall be included in the determinations required under section 279(b)(4) as of any day only if such corporation is a member of the affiliated group on such day, and, in determining projected earnings of such corporation under section 279(c)(3), there shall be taken into account only the earnings and profits of such corporation for the period during which it was a member of the affiliated group. The total amount of an affiliated member's assets, indebtedness, projected earnings, and interest to be paid or incurred will enter into the computation required by this section, irrespective of any minority ownership in such member.

(b) *Aggregate money and other assets.* In determining the aggregate money and all the other assets of the affiliated group, the money and all the other assets of each member of such group shall be separately computed and such separately computed amounts shall be added together, except that adjustments shall be made, as follows:

(1) There shall be eliminated from the aggregate money and all the other assets of the affiliated group intercompany receivables as of the date described in section 279(c)(1);

(2) There shall be eliminated from the total assets of the affiliated group

any amount which represents stock ownership in any member of such group;

(3) In any case where gain or loss is not recognized on transactions between members of an affiliated group under paragraph (d)(3) of this section, the basis of any asset involved in such transaction shall be the transferor's basis;

(4) The basis of property in a transaction to which §1.1502-13 applies is the basis of the property determined under that section; and

(5) There shall be eliminated from the money and all the other assets of the affiliated group any other amount which, if included, would result in a duplication of amounts in the aggregate money and all the other assets of the affiliated group.

(c) *Aggregate indebtedness.* For purposes of applying section 279(c), in determining the aggregate indebtedness of an affiliated group of corporations the total indebtedness of each member of such group shall be separately determined, and such separately determined amounts shall be added together, except that there shall be eliminated from such total indebtedness as of the date described in section 279(c)(1):

(1) The amount of intercompany accounts payable,

(2) The amount of intercompany bonds or other evidences of indebtedness, and

(3) The amount of any other indebtedness which, if included, would result in a duplication of amounts in the aggregate indebtedness of such affiliated group.

(d) *Aggregate projected earnings.* In the case of an affiliated group of corporations (whether or not such group files a consolidated return under section 1501), the aggregate projected earnings of such group shall be computed by separately determining the projected earnings of each member of such group under paragraph (d) of §1.279-5, and then adding together such separately determined amounts, except that:

(1) A dividend (a distribution which is described in section 301(c)(1) other than a distribution described in section 243(c)(1)) distributed by one member to another member shall be eliminated, and

(2) In determining the earnings and profits of any member of an affiliated group, there shall be eliminated any amount of interest income received or accrued, and of interest expense paid or incurred, which is attributable to intercompany indebtedness,

(3) No gain or loss shall be recognized in any transaction between members of the affiliated group, and

(4) Members of an affiliated group who file a consolidated return shall not apply the provisions of §1.1502-18 dealing with inventory adjustments in determining earnings and profits for purposes of this section.

(e) *Aggregate interest to be paid or incurred.* For purposes of section 279(c)(4), in determining the aggregate annual interest to be paid or incurred by an affiliated group of corporations, the annual interest to be paid or incurred by each member of such affiliated group shall be separately calculated under paragraph (e) of §1.279-5, and such separately calculated amounts shall be added together, except that any amount of annual interest to be paid or incurred on any intercompany indebtedness shall be eliminated from such aggregate interest.

[T.D. 7262, 38 FR 5850, Mar. 5, 1973, as amended by T.D. 8560, 59 FR 41675, Aug. 15, 1994; T.D. 8597, 60 FR 36679, July 18, 1995]

§ 1.279-7 Effect on other provisions.

Under section 279(j), no inference is to be drawn from any provision in section 279 and the regulations thereunder that any instrument designated as a bond, debenture, note, or certificate or other evidence of indebtedness by its issuer represents an obligation or indebtedness of such issuer in applying any other provision of this title. Thus, for example, an instrument, the interest on which is not subject to disallowance under section 279 could, under section 385 and the regulations thereunder, be found to constitute a stock interest, so that any amounts paid or payable thereon would not be deductible.

[T.D. 7262, 38 FR 5851, Mar. 5, 1973]

§ 1.280B-1 Demolition of structures.

(a) *In general.* Section 280B provides that, in the case of the demolition of